IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-7-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD Nos.257 to 261 of 2006
and
CMP Nos.2105 to 2109 of 2006

Arumugam .. Petitioner in CRP 257/2006

Periasamy .. Petitioner in CRP 258/2006

Mayakrishnan .. Petitioner in CRP 259/2006

1.Narayanasamy (died)
2.Janabai
3.Govindasamy
4.Venkatesan
5.Gunavathi
(Petitioners 2 to 5 brought on record as LRs of the deceased 1st petitioner (Narayanasamy) and impleaded as petitioners 2 to 5 in CRP 260/2006 vide order of Court dt.16.7.2007 made in CMP Nos.10392 & 10393/2006) .. Petitioners 1 to 5 in CRP 260/2006

9.Kannan @ Devarasu .. Petitioner in CRP 261/2006

vs

1.Venkatasubba Reddiar
2.Vanasatchi
3.Subbulakshmi .. Respondents in all CRPs

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Civil revision petitions preferred under Sec.25 of Pondicherry Building (Lease and Rent Control) Act 1960 as amended by Act 80 of 1980 against the judgment and decree dated 18.10.2005 in RCA Nos.7, 8, 9, 10 and 11 of 2005 on the file of the Principal District Judge, Pondicherry, allowing the appeal by setting aside the order dated 25.2.2005 in HRCOP Nos.80, 81, 82, 83 and 84 of 2001 on the file of the Rent Controller, Pondicherry.

For Petitioners : Mr.AR.L.Sundaresan
Senior Counsel
for Mr.K.Raja Srinivas

For Respondents : Mr.V.Raghavachari for R1

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COMMON ORDER

This order shall govern these five revisions in C.R.P.Nos.257 to 261 of 2006.

2.The tenants are the revision petitioners herein who challenge the judgments of the Rent Control Appellate Authority namely the Principal District Judge, Pondicherry, in RCA Nos.7 to 11 of 2005 whereby the orders of the Rent Controller of the said place dismissing the petitions in RCOP Nos.80 to 84 of 2001 on the ground of willful default, were reversed by allowing the appeals.

3.The Court heard the learned Counsel on either side.

4.The first respondent herein filed all the above RCOPs five in number, alleging that the respondents in the RCOP namely the petitioners herein, were occupying the premises which belonged to his father Ramakrishna Reddiar; that he died in 1992; that the first respondent became the owner of the property; that the petitioners became the tenants under him; that they were making payments of rental; that it was enhanced to Rs.605/- per month for the year 1999; that the tenants were irregular in paying the rent; that they paid rent upto December 1999; that there was a panchayat convened for the revision of the rent; that the tenants refused to accept the revision; that following the same, each petitioner sent a sum of Rs.400/- by way of money order on 1.2.2000; that the same was rightly refused; that thereafter, the tenants issued a notice including the name of the mother of the first respondent which was suitably replied; that further, they gave another notice demanding the bank account number of the first respondent in order to enable them to deposit the rent in the bank; and that following the notice issued through the Counsel which was of no avail, the first respondent filed the RCOPs for eviction on the ground of willful default.

5.Pending the RCOPs, since the tenants averred in the course of their counter that the property belonged to the mother and sister of the first respondent also, and they should have also been added as parties, they also became impleaded as parties to the proceedings. Thereafter, amendment application was filed stating that there was denial of title of the first respondent, and the same must also be taken as a ground.

6.The tenants filed counter stating that the property originally belonged to the father of the first respondent Ramakrishna Reddiar; that he died intestate in 1992 leaving behind the first respondent and also his wife and daughter, the respondents 2 and 3 respectively, and hence, they all became the owners of the property; that under the circumstances, the case of the first respondent that he was entitled to the property exclusively was false; that it was a case in which the respondents 2 and 3 herein were also claiming the rental share; that accordingly, it was paid; that the balance was sent to the first respondent, which he refused to receive; that thereafter, the RCOPs were filed for depositing the rental; that they deposited the same before the Court; that under the circumstances, it was not a case where the RCOPs were filed by the first respondent as the co-owner representing the other co-owners also, nor was it filed with the consent of the co-owners also, but filed claiming to be the exclusive owner of the property; and that under the circumstances, the petitions were not maintainable.

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7.The tenants further added that in the instant case, there was no application of Sec.10(2)(1) of the Act to the present facts of the case; that there was a rental payment made by way of money order; but, it was refused; that thereafter, a notice was also issued calling upon the first respondent to name the bank so that it could be deposited; but, it was not done; that under the circumstances, there was no willful default at all, and hence, the petitions were to be dismissed.

8.The second and third respondents who are the mother and sister of the first respondent respectively, filed their respective counter stating that they opposed the petitions; that consent was never obtained from them; and that actually, they are also the owners of the property along with the first respondent.

9.The learned Rent Controller conducted an enquiry in all the RCOPs, where the evidence both oral and documentary, was adduced. The Rent Controller came to the conclusion that all the petitions were not maintainable and hence, dismissed the same. Aggrieved, the first respondent preferred appeals in the RCAs referred to above, which were allowed by the appellate forum. The aggrieved tenants have brought forth these revisions before this Court.

10.The learned Senior Counsel advancing his arguments on behalf of the petitioners-tenants, would submit that in the instant case, the RCOPs were not maintainable since the first respondent filed the petitions originally stating that he was entitled to the property, and he has been collecting the rents, and there was willful default, and eviction was to be ordered; that the respondents 2 and 3 filed applications to implead themselves as co-owners of the property; that the first respondent took out an amendment application wherein he filed an affidavit again maintaining the stand that he was the exclusive owner of the property, and thus, there was a denial of title of the first respondent, and under the circumstances, it was also to be added as a ground; that in the instant case, the Rent Controller has dismissed the petitions rightly holding that not only the first respondent, but also the respondents 2 and 3 were the co-owners of the property, and without their consent, the petitions have been filed, and under the circumstances, the petitions were not maintainable; that further, in the instant case, the appellate forum has erroneously reversed the said orders; that there was a counter filed by the respondents 2 and 3 categorically stating that they were also co-owners of the property, and the petitions were to be dismissed; that in the instant case, one of the co-owners namely the mother, has also been examined as R.W.2 where she has categorically deposed that no consent was received from her for filing the petitions; that if a petition has been filed ordinarily by a person for eviction on the ground that willful default is committed, it can be presumed that he represents the other co-owners also; that in the absence of any consent given by other co-owners and that too, when it is objected to by making their presence in Court, it would be highly difficult to state that it can be presumed that their consent was available, and it can be inferable; and that under the circumstances, the appellate authority was not correct in recording a finding that the petitions are maintainable.

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11.Added further the learned Senior Counsel that in the instant case, the rent was actually sent by way of money order; but, it was refused; that thereafter, procedural formalities were followed for the purpose of depositing the rent in the bank; that despite that, the first respondent was not coming forward to name the bank which necessitated them to file petitions for depositing the rental before the Court; that even assuming that there were arrears of rental, it cannot be termed as willful default committed by the tenants, and under the circumstances, the orders of the appellate authority have got to be set aside.

12.In support of his contentions, the learned Senior Counsel relied on the following decisions:

(i) (2004) 3 SUPREME COURT CASES 178 (INDIA UMBRELLA MANUFACTURING CO. AND OTHERS V. BHAGABANDEI AGARWALLA AND OTHERS) and
(ii) (2006) 2 SUPREME COURT CASES 724 (MOHINDER PRASAD JAIN V. MANOHAR LAL JAIN.

13.Contrary to the above, it is contended by the learned Counsel for the first respondent that in the case on hand, the main question would be whether the first respondent could be termed as landlord or not; that it is an admitted position that in 1992, Ramakrishna Reddiar died; that from the time onwards, for a period of eight years, the tenants have been making payment of rental without any murmur only to the first respondent; that this fact is also admitted not only by the tenants, but also by the second respondent who is the mother of the first respondent; that even any notice that was issued was only to the first respondent; that having made payment of rental all along the years and having recognised the first respondent as landlord then and there, they are estopped from questioning his status as the landlord; that it is a case where the first respondent has proved that he is the landlord in respect of the property, and he has been collecting the rent also; that in a give case like this, a person who is entitled to collect rent, can maintain a petition; that it has been clearly shown that there was willful default on the part of the tenants; and that having committed willful default, now the tenants cannot be permitted to say that the first respondent is not the landlord, and others have got ownership in the property, and they have also not joined, nor had they given consent to file the petitions, and hence, they were to be dismissed.

14.In support of his contention, the learned Counsel relied on a decision of the Apex Court reported in 2004 (1) CTC 353 (INDIA UMBRELLA MANUFACTURING CO. AND OTHERS V. BHAGABANDEI AGARWALLA AND OTHERS).

15.The Court paid its anxious consideration on the submissions made.

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16.It is not in controversy that the property originally belonged to one Ramakrishna Reddiar, who died in the year 1992. All these persons, who are the revision petitioners before this Court, became the tenants

under him. From the year 1992 till 2001, when the strained relationship arose between the parties, the rent was collected by the first respondent. It is also not in controversy that the rent was sent by money order only to the first respondent; but, it was refused. Following the same, a notice was also sent to the first respondent calling upon him to name the bank so that the rental could be deposited; but, it was not done. Now, at this juncture, what is pertinent to point out is that when the first respondent filed the petitions at the earliest, he has stated that he is the owner of the property. Subsequently, when there was an amendment made after the impleadment of the second and third respondents, namely the mother and sister of the first respondent respectively, it was clearly averred that he is the exclusive owner of the property. At this juncture, it is to be pointed out that the statement what was originally found in the RCOPs, and the subsequent amendment are against the truth. The property originally belonged to Ramakrishna Reddiar, which devolved not only on the first respondent, but also on the mother and sister, who are shown as respondents 2 and 3 respectively. It can be well stated that the recovery of rental from 1992 till 2001 should have been made by the first respondent on behalf of his mother and sister, who are the heirs of Ramakrishna Reddiar, also. When the petitions were filed, he has called himself as owner of the property. That apart, he maintained the same stand even after the proceedings and amendment. He further went to the extent of stating that there was denial of title, and that would be clearly indicative of the fact that he wanted to maintain that he is the exclusive owner of the property. At this juncture, it is pertinent to point out that when there are number of co-owners and when a petition is filed for eviction, one of the co-owners can maintain a petition if the consent of the other co-owners was available. It remains to be stated that when eviction proceedings were initiated by one co-owner in respect of the property generally owned by co-owners, it would imply that such co-owner is the agent of other co-owners. There cannot be any quarrel over this legal position brought to the notice of the Court by the learned Counsel for the first respondent. But, in the instant case, that cannot be applied for the simple reason that the petitioners' side is able to show the contrary.

17.Apart from the above, the respondents 2 and 3, who are the wife and daughter of Ramakrishna Reddiar respectively, have appeared before the Rent Controller, and they have filed the counter also wherein they have clearly stated that they are also the co-owners of the property. Once they appeared before the Rent Controller and filed counter like that, and it also went against the first respondent, it would be quite evident that they have never given consent for filing the petitions; but, on the contrary, they were against the petitions. They have received a part of the rental payment before the initiation of the proceedings from the tenants. Thus, it is a case, where, before the filing of the petitions, the first respondent who happened to be a co-owner of the property along with the mother and sister, has not obtained their consent. On the contrary, they appeared before the Court to show that they have not given consent, but opposed the petitions. In the absence of the consent of the other co-owners and in view of the objections made by them, the petitions were not maintainable. Once the RCOPs are not maintainable in the eye of

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law, no question of commission of willful default would arise for consideration. Hence, the orders of the appellate authority are set aside. All the civil revision petitions are allowed. No costs. Consequently, connected CMPs are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To:

1.The Principal District Judge
Pondicherry

2.The Rent Controller
Pondicherry

3. The Record Keeper,
VR Section, High Court, Madras.

5 CC To Mr.K.R.Raja Shrinivas, Advocate, SR NO.49820, 47126.
10 CC To Mr.V.Raghavachari, Advocate, SR NO.46998 to 47002, 47396 to 47400.

Nsv/

CRP NPD Nos.257 to 261
of 2006

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RVL 22.08.2007

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